No. 98-454

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Supreme Court of the United States

October Term, 1998

CITY OF CINCINNATI; ROXANNE QUALLS, Councilmember and Mayor of the City of Cincinnati; DWIGHT TILLERY, Councilmember; TYRONE YATES, Councilmember; TODD PORTUNE, Councilmember; BOBBIE STERNE, Councilmember; PHILIP M. HEIMLICH, Councilmember; MINETTE J. COOPER, Councilmember; THOMAS A. LUKEN, Councilmember; NICHOLAS J. VEHR, Councilmember; CHARLES WINBURN, Councilmember; JOHN F. SHIREY, City Manager of the City of Cincinnati,

Petitioners,

v.

JOHN R. KRUSE; KRUSE FOR COUNCIL COMMITTEE; THOMAS E. BRINKMAN, JR.; MARK W. MILLER,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTERSTATEMENT OF THE CASE

Petitioners' Statement of the Case includes "facts" not properly considered by this Court, either because they were not included in the record or because they are irrelevant to this Court's analysis. It further excludes facts in the record important to this Court's analysis.

Cincinnati Ordinance 240-1995 (the "Ordinance"), enacted on July 6, 1995, prevented any candidate for the City Council from spending in excess of approximately $140,000 in an election, in contravention of respondents' First and Fourteenth Amendment rights.[1] It is this Ordinance that is challenged in this case. Also for the first time in the 1997 elections, the Cincinnati City Council imposed a $1,000 limit on campaign contributions to candidates for city council. City of Cincinnati Ordinance No. 336-1995.[2] This was enacted on October 11, 1995, three months after the expenditure limit ordinance.

Respondents filed suit challenging the Ordinance as facially unconstitutional and later filed a motion for summary judgment on their claims. As part of their opposition to the respondents' motion for summary judgment, petitioners used this unimpeded opportunity to present all facts they intended to present at trial, loading the

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[1] *Buckley v. Valeo*, 424 U.S. 1 (1976). The Cincinnati City Solicitor informed the Council prior to the vote on the Ordinance of the constitutional prohibition on campaign spending limits: "As we have previously advised the Council and the Campaign Finance Advisory Board, the U.S. Supreme Court has found expenditure limits to be unconstitutional in the case of *Buckley v. Valeo.*" Joint Appendix I (before the court of appeals) ("Jt. App.") at 35.

[2] *See* Respondents' Appendix ("RA") at 1-10. The 1995 contributions limit ordinance was subsequently repealed, but a new ordinance was enacted which included the same $1,000 limit on individual contributions. City of Cincinnati Ordinance No. 9-1997. *See* RA at 11-26.

record with factual allegations they claim justified the Ordinance.[3] Virtually none of the "facts" presented motivated the Council when it passed the Ordinance; some were not even available to the Council at the time of the passage.[4]

The City claims "that it seeks only the opportunity to prove at trial that its campaign spending limits are necessary to address its compelling governmental interests." Pet. at 8-9.[5] However, the City had ample opportunity to produce for the district court in its opposition to the respondents' motion for summary judgment all evidence that it thought it could prove at trial. Petitioners effectively admit the deficiencies in the record before this Court by asking for this Court to permit them to return to the district court to introduce yet more evidence at trial.

REASONS FOR DENYING THE WRIT

The petition entirely fails to identify any grounds warranting the Court's plenary review under traditional,

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[3] One fact petitioners emphasize is that the Ordinance arose out of "twenty months of study and deliberation." Pet. at 2. Yet they fail to note that the Campaign Finance Advisory Board appointed by the Council to study the campaign finance issue recommended against the spending limitations imposed by the Ordinance. Jt. App. I at 148-49.

[4] For example, following the commencement of this litigation, the City commissioned two studies, one purporting to analyze spending patterns in City Council elections, summarized in Jt. App. I at 81-103, and another being a public opinion research project conducted over the six-month period from July through December 1996, summarized in Jt. App. I at 104-23.

[5] References to the petition for a writ of certiorari filed will be noted as "Pet." References to petitioners' appendix will be referred to as "App." The full record of the district court will be referred to as "R."

recognized criteria. First, petitioners point to no conflict among lower federal courts concerning the constitutionality of expenditure limits for candidates. Rather, any similar contention has been uniformly and unanimously rejected by every court to hear it.[6]

Moreover, while petitioners make the general assertion that the lower court misconstrued this Court's seminal decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), they do not directly dispute that the court below correctly interpreted and applied the legal principles articulated in that case. Specifically, petitioners do not dispute that the court below was correct to review the Cincinnati Ordinance under strict scrutiny principles or that this Court struck down an indistinguishable expenditure limit enacted by Congress as facially unconstitutional pursuant to that test.

Rather, petitioners argue only that "new facts and circumstances" demonstrate that expenditure limitations in Cincinnati are, in fact, narrowly tailored to compelling government interests primarily because, without them, the electoral system in Cincinnati "appears" to be "corrupt." Pet. at 13. As the court below correctly recognized, however, petitioners' position is fundamentally flawed for two independent reasons. *Buckley*'s invalidation of electoral limits was not dependent on any specific record evidence and, in any event, Cincinnati has utterly failed to allege any new evidence, not considered by *Buckley*, in

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[6] *Suster v. Marshall*, 149 F.3d 523 (6th Cir. 1998) (Ohio law limiting campaign expenditures for judicial candidates unconstitutional); *NAACP v. Jones*, 131 F.3d 1317, 1323 (9th Cir. 1997), *cert. denied*, 1998 U.S. LEXIS 4807 (U.S. Oct. 5, 1998) ("The 'wealth primary' does not burden any fundamental First Amendment rights."); *Shrink Missouri Gov't PAC v. Maupin*, 71 F.3d 1422 (8th Cir. 1995), *cert. denied*, 116 S. Ct. 2579 (1996) (Missouri law limiting campaign expenditures for candidates unconstitutional).

support of its Ordinance. The *Buckley* decision did hold, as a matter of law, that spending limits were not justified by the government's interest in reducing the appearance of corruption caused by large donors potentially exercising improper influence over candidates. Rather, as *Buckley* and its progeny repeatedly make clear, the problem of large donors exercising disproportionate influence is directly addressed by outlawing such donations; while reducing the amount a candidate can spend of his own money or small donations is obviously, at best, a "fatally overbroad" and unnecessary response to this concern. *FEC v. National Conservative Political Action Comm.*, 470 U.S. 480, 498 (1985) ("NCPAC").

In addition, even in the wholly implausible event that *Buckley* struck down Congress' expenditure limits as facially unconstitutional only on a conditional basis, to be revived when presented with "new facts" establishing a better link between spending caps and reducing large donor influence, this record is wholly devoid of any such evidence, as the court below carefully explained. There is not a scintilla of evidence that any candidate in federal *or* Cincinnati elections has violated any contribution limitation or that spending caps will somehow reduce large donor influence or otherwise render contribution limits more "effective." As the court below noted, there could not possibly be any such evidence on this record since Cincinnati never had contribution limits until after they had enacted spending caps and thus had no experience to determine whether contribution limits alone were "adequate." App. at 20.

The "new evidence" trumpeted by petitioners, then, consists of news clippings and law review articles maintaining that the "limited" *scope* of federal laws governing contributions renders them inadequate to eliminate large donor influence because of "bundling" and "soft money" "loopholes." Pet. at 18, 20 n.27. But even assuming such "loopholes" somehow do diminish the "effectiveness" of

contribution limits, this is not relevant to the *Buckley* court's straightforward conclusion that expenditure limits cannot *bolster* the effectiveness of whatever contribution limits may be in place. In other words, if petitioners are correct that "bundling" and other federal "loopholes" are unwarranted, the only appropriate response is to close those loopholes to the extent, if any, such restrictions are constitutionally permissible. It provides no basis, however, to prohibit all candidates from *spending* money, including money which has not been obtained through bundling or other loopholes. Any attempt to "cure" the problem of large donor influence by prohibiting the expenditure of money not derived from large donors is therefore fundamentally misguided and necessarily overbroad.

Petitioners attempt to avoid this binding precedent and irrefutable logic by redefining political "corruption" (or the appearance thereof) from the "improper influence" of large donors upon candidates – which *Buckley* said government could legitimately target – to include general public cynicism about politicians or politics. The latter phenomenon, according to the City, is fueled by the advantages provided by money in electoral politics. Upon this premise, petitioners make the tautological argument that efforts to eliminate the advantages of well-funded candidates reduces the "appearance of corruption" because the advantages of well-funded candidates in elections "appear," to the general public, to be "corrupt."

But if *Buckley* stands for anything, it is that money spent *by* candidates is not a corruption of the electoral process; it is core political speech essential to the electoral process. Thus, it matters not whether the average person thinks it is "unfair" or "corrupt" that one candidate may more effectively communicate his message to voters because he has more money with which to do so. Such communication is core political speech and its constitutional protection is not determined by public opinion

polls. In any event, as the concurring opinion specifically noted, the City is unable to produce any evidence that the Cincinnati electorate viewed unlimited campaign spending as "corrupting" if it was combined with contribution limits, since the polling that the City relied upon was done before any contribution limits had taken effect in any election cycle. App. at 30-31 (Cohn, J., concurring).

Thus, the court below is entirely correct that the interests advanced in support of the Cincinnati Ordinance are both illegitimate as a matter of law and, in any event, supported only by factual allegations and legislative findings indistinguishable from those relied upon by Congress and rejected by the *Buckley* court. Accordingly, unless the core legal holdings of *Buckley* are to be reversed, the Cincinnati Ordinance is plainly unconstitutional. Petitioners, however, have not asked the Court to so modify *Buckley* and any such revision would be precluded by every fundamental principle of *stare decisis*. Moreover, since petitioners have not and cannot allege new facts and circumstances which either distinguish *Buckley* in a Cincinnati-specific context or demonstrate that the allegedly empirical underpinnings of that decision have been eroded by virtue of the federal experience since 1976, granting review over the narrow question advanced in the petition would not result in any disturbance of the court below's alternative holding. Thus, even assuming *Buckley* and its progeny should be revisited, it plainly should not be done pursuant to the ill-defined and narrow question presented by petitioners for review, or on the facially inadequate factual record presented here.

I. CINCINNATI'S LIMITATION ON CAMPAIGN EXPENDITURES PLAINLY VIOLATES THE FIRST AMENDMENT

"Beginning with *Buckley*, the Court's cases have found a 'fundamental constitutional difference between money spent to advertise one's views . . . and money contributed to the candidate to be spent on his campaign.' " *Colorado Republican Campaign Comm. v. FEC*, 116 S. Ct. 2309, 2315 (1996) (Breyer, J.) (quoting *NCPAC*, 470 U.S. at 498). The Court has upheld restrictions on money going *to* the candidate because they entail only "a marginal restriction upon the contributor's ability to engage in free communication" and directly serve the government's compelling interest in avoiding "the appearance of improper influence" by large donors extracting a *quid pro quo*. *Buckley*, 424 U.S. at 20, 27. In stark contrast, the Court has unfailingly struck down any effort to restrict money spent *by* candidates (or political parties or PACs) because such restrictions constitute "direct and substantial restraints" on "political expression 'at the core of our electoral process and of the First Amendment freedoms.' " *Id.* at 39 (quoting *Williams v. Rhodes*, 393 U.S. 23, 32 (1968)). These "far greater restraints on the freedom of speech and association" must therefore "satisfy the exacting scrutiny applicable to limitations on core First Amendment rights of political expression." *Id.* at 44-45. Such direct restraints on core political expression may only be justified in the extremely rare circumstance where the regulation is narrowly tailored to a compelling government interest.[7]

Most pertinent here, it is firmly established that limitations on campaign-related expenditures are plainly not

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[7] *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 251-52, 256 (1986); *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 657 (1990); *NCPAC*, 470 U.S. at 496.

justified by the government's interest in preventing the appearance of *quid pro quo* corruption. The Court directly stated this in *Buckley* and has consistently reaffirmed it ever since. The *Buckley* court directly held that the "markedly greater burden on basic freedoms caused by [spending limits] thus *cannot be sustained simply by invoking the interest in maximizing the effectiveness of the less intrusive contribution limitation.*" 424 U.S. at 44 (emphasis added). Although the interest in eliminating the appearance of corruption had been offered in support of expenditure limitations, the Court squarely held that "[no] government interest that has been suggested is sufficient to justify the restrictions on the quantity of political expression." *Id.* at 55. Thus, "the First Amendment *requires* the invalidation of . . . ceilings on overall campaign expenditures" since the "First Amendment simply cannot tolerate [this] restriction on the freedom of a candidate to speak without legislative limit on behalf of his own candidacy." *Id.* at 58, 54 (emphasis added).[8]

Just two Terms ago, the Court reaffirmed that the "central holding in *Buckley* . . . is that spending money on one's own speech must be permitted. . . . " *Colorado*, 116 S. Ct. at 2321 (Kennedy, J.). Indeed, the *Colorado* decision *extended Buckley* to invalidate restrictions on spending by political parties precisely because the "Constitution . . . grants to individuals, *candidates*, and ordinary

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[8] *See also id.* at 262 (White, J., dissenting) ("The court concludes that the Constitution denies Congress the power to limit campaign expenses; federal candidates – and I would suppose state candidates, too – are to have the constitutional right to raise and spend unlimited amounts of money in quest of their own election."); *NCPAC*, 470 U.S. at 497. ("In *Buckley* we struck down the FECA's limitation on individuals' independent expenditures because we found no tendency in such expenditures, . . . to corrupt or to give the appearance of corruption.")

political committees the right to make unlimited independent expenditures." 116 S. Ct. at 2317 (Breyer, J.) (emphasis added).

The rationale for invalidating spending caps as a matter of law is quite straightforward. Limiting how much a candidate can spend is not directed at, much less narrowly tailored to, eliminating the appearance of *quid pro quo* corruption created by large contributions to the candidate. As the *Buckley* court explained, " '[i]f a senatorial candidate can raise $1 from each voter, what evil is exacerbated by allowing that candidate to use all the money for political communication?' " *Id.* at 56 n.64 (quoting *Buckley v. Valeo*, 519 F.2d 821, 917 (D.C. Cir. 1975) (Tamm, J., concurring in part and dissenting in part)). Since all the money spent by the candidate is either his own or collected in amounts small enough to avoid any potential *quid pro quo* corruption, limiting the expenditure of those legally acquired monies cannot possibly affect or reduce any perception that large donors are somehow controlling the candidate. "There is nothing invidious, improper, or unhealthy in permitting such funds to be spent to carry the candidate's message to the electorate." *Id.* at 56. Rather, the true purpose of such spending caps is the facially illegitimate one of "restrict[ing] the speech of some elements of our society in order to enhance the relative voice of others." *Id.* at 48-49.[9]

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[9] *See also id.* at 56-57 ("[E]qualization of permissible campaign expenditures might not serve to equalize the opportunities of all candidates, but to handicap a candidate who lacked substantial name recognition."); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 257 (1986) ("[P]olitical 'free trade' does not necessarily require that all who participate in the political marketplace do so with exactly equal resources.").

The lower court and dissenting opinion in *Buckley* nonetheless hypothesized a potential link between spending caps and contribution limits: the ability to spend a lot of money creates a "temptation" to violate the contribution regulations. *Id.* at 264-65 (White, J., dissenting). *See Buckley*, 519 F.2d at 840 (On the basis of extensive findings, "Congress concluded that [ ] corrupt and pernicious practices are more likely to occur when there are no effective limits on the amount of campaign expenditures."). The Court squarely rejected this strained assertion as "not persuasive." *Buckley*, 424 U.S. at 55. Since the statutory enforcement mechanisms were sufficient to "police the contribution provisions" and detect "illegal contributions," those provisions "undercut[ ] whatever marginal role the expenditure limitations might otherwise play in enforcing the contribution ceilings." *Id.* at 56.

In the face of all this, petitioners nevertheless maintain that the *Buckley* court did not reject the court of appeals' strained "temptation" argument as insufficient to satisfy strict scrutiny, but simply temporarily struck down FECA's expenditure limitations until it could be determined whether "illegal contributions" would result without such spending caps. Pet. at 16. But, as the language cited above makes clear, the *Buckley* Court found the lower court's reasoning "not persuasive" as a matter of law and held FECA's expenditure limitations *facially* unconstitutional because such limitations "cannot be sustained simply by invoking the interest in maximizing the effectiveness of the less intrusive contribution limitations." *Buckley*, 424 U.S. at 44.

Petitioners' reading of *Buckley* is also contrary to the most basic principles of narrow tailoring under strict scrutiny analysis, as the cases subsequent to *Buckley* directly establish. Under petitioners' theory, government may prophylactically impose "direct and substantial" restrictions on the "core political expression" of 99% of candidates because 1% of candidates will be "tempted,"

in the exercise of this constitutionally-guaranteed freedom, to violate another law which carries draconian penalties for noncompliance. It is axiomatic, however, that any attempt by government to prohibit all individuals from exercising their free speech rights because some individuals may abuse this freedom is a "fatally overbroad response to that evil." *NCPAC*, 470 U.S. at 498. The state may not "lump" candidates spending their own money, or legally acquired money, in with candidates who have violated contribution limits "and refuse to employ more precise measures to separate one kind [of candidate] from the other." *Village of Schaumberg v. Citizens for a Better Environment*, 444 U.S. 620, 637 (1980); *see NCPAC*, 470 U.S. at 498.

In any event, even assuming *Buckley*'s invalidation of expenditure limitations was premised on an empirical prediction that they are unnecessary to avoid "illegal contributions," this provides no aid to petitioners here. For in this case, as in *Buckley*, "[t]here is no indication that the substantial criminal penalties for violating the contribution ceilings combined with the political repercussion of such violations will be insufficient to police the contribution provisions." *Buckley*, 424 U.S. at 55-56.[10] There is not a scintilla of evidence that any Cincinnati City Council candidate would violate the contribution ceilings absent spending caps and, as the court below correctly noted, there could not possibly be because "contribution limits were not enacted until *after* the spending

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[10] Petitioners consistently assert, without any support, that *Buckley* was decided on a "slender factual record." Pet. at 25 n.32. This is demonstrably untrue. The district court in *Buckley* "entered a memorandum order adopting *extensive* findings of fact" and FECA was supported by an extraordinarily voluminous congressional record and findings, which dwarf the miniscule record present here. *Buckley*, 424 U.S. at 10 (emphasis added); *see Buckley*, 519 F.2d at 837-38.

limit at issue here." App. at 20 (emphasis added). All we have here, as in *Buckley*, is a legislative prediction that expenditure limitations will "reduce the incentive" to violate contribution ceilings. Since Congress' prediction in this regard is facially inadequate, so too is the City Council's. 424 U.S. at 55. *See Colorado*, 116 S. Ct. at 2317 (" 'When the Government defends a regulation on speech as a means to . . . prevent anticipated harms, it must do more than simply posit the existence of the disease sought to be cured.' ") (quoting *Turner Broadcasting Sys., Inc. v. FCC*, 114 S. Ct. 2445, 2469-70 (1994)); *NCPAC*, 470 U.S. at 498 ("On this record, [incentives to violate contribution limits] remain[ ] a hypothetical possibility and nothing more.").

Moreover, there is not a scintilla of evidence that any *federal* candidate for any federal office where unlimited spending is permitted has ever violated any restriction on contributions. Thus, even assuming that *Buckley*'s invalidation of expenditure limitations was premised on an empirical prediction that contribution limits would be adhered to absent such caps, there is absolutely no evidence in the record to undermine the Court's entirely accurate prediction. Consequently, although the petitioners make the unsubstantiated claim that the City Council relied heavily on the "federal experience" in enacting its Ordinance,[11] it can produce no evidence from that federal experience which undermines the only aspect

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[11] Petitioners contend that the "City's action drew, in part, on the two decades of federal election experience. . . . " Pet. at 2 (citing R. No. 38, Exh. 7, Sterne Aff. at 4-5). However, a review of this affidavit, as well as the entire record, shows it is devoid of *any* reference to the "federal election experience." The newspaper articles in the *Washington Post*, *The New York Times* and the *Boston Globe* referred to in the petition were never entered into the record or relied on by the City Council. *See* Pet. at 11 n.13, n.14; *id.* at 19 n.26.

of the *Buckley* opinion that even allegedly rests on "empirical grounds," *i.e.*, expenditure limits are unnecessary to "police contributions."

Apparently recognizing this fatal deficiency, petitioners attempt to change the subject. Since they cannot assert that the absence of federal expenditure caps has led to *violations* of FECA's contribution limits, they argue that federal contribution regulations are not sufficiently *far-reaching* to prevent the appearance of *quid pro quo* corruption. Specifically, relying solely on a law review article co-authored by petitioners' counsel of record, they argue that the practice of "bundling" small contributions in federal elections allows some donors to still exercise improper disproportionate influence over candidates. Pet. at 18-19 (citing Jamin Raskin and John Bonifaz, *Equal Protection and the Wealth Primary*, 11 Yale L. & Pol'y Rev. 273 (1993)). While, if properly substantiated, such evidence might provide an adequate justification for a Cincinnati law prohibiting "bundling," it provides no basis, under *Buckley* and its progeny, for imposing expenditure limits that have absolutely no effect on the "evil" practice of bundling.

As the court below patiently explained, *Buckley*'s condemnation of expenditure caps was not premised on any public policy assessment of how "effective" FECA's contribution regulations would be in achieving Congress' goal of reducing large donor influence – such assessments are for the legislative, not judicial, branch. App. at 19. Rather, it was premised on the unassailable notion that – *regardless* of how effective contribution limits are in reducing the appearance of improper influence – limiting campaign-related expenditures cannot possibly be narrowly tailored to accomplish that goal. The presence or absence of restrictions on how a candidate *spends* his money has, by definition, absolutely no effect on whether the contributions *to* the candidate are bundled or unbundled. The Cincinnati Ordinance, however, prohibits

all candidates from spending over $140,000, without regard to whether they have received any contributions or whether those contributions are bundled. At the same time, moreover, the Ordinance does nothing to prohibit the alleged evil of bundling itself. By definition, then, expenditure caps are not a necessary nor least intrusive means of eliminating any abuses associated with bundling.[12] Rather, since Cincinnati prohibits bundlers and nonbundlers alike from expending their own campaign funds, and does not even prohibit the act of bundling, it is obviously "fatally overbroad" and cannot satisfy strict scrutiny. *NCPAC*, 470 U.S. at 498.

As the court below noted, even if there is some ambiguity in *Buckley* concerning whether the permissibility of expenditure caps turned on the "effectiveness" of contribution limits, rather than the absence of narrow tailoring, subsequent campaign finance cases have established that limiting campaign spending, like all other restrictions on fundamental speech, are subject to a strict requirement of narrow tailoring. App. at 18-19. Both *Colorado* and *NCPAC* struck down expenditure limitations precisely because "the effort to link either corruption or the appearance of corruption to independent expenditures by PACs, whether large or small, simply does not pass [the First Amendment's rigorous] standard of review." *NCPAC*, 470 U.S. at 501. Indeed, the Court in *Colorado* rejected an argument indistinguishable from that offered by petitioners here, *i.e.*, a ban on political parties'

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[12] *See, e.g., Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989) (First Amendment requires the government to select "the least restrictive means to further [its] articulated interest" in burdening free speech); *Village of Schaumburg*, 444 U.S. at 637 (Restrictions on free speech must be "narrowly drawn regulations designed to serve [a state's legitimate] interests without unnecessarily interfering with First Amendment freedoms.").

independent expenditures is justified because the limits on contributions to political parties are not strict enough. In words equally applicable here, the Court responded:

> We could understand how Congress, were it to conclude that the potential for evasion of the individual contribution limits was a serious matter, might decide to change the statute's limitations on [bundling] . . . . But we do not believe that the risk of corruption present here could justify the "markedly greater burden on basic freedoms caused by" the statute's limitation on *expenditures*.

Colorado, 116 S. Ct. at 2316 (quoting *Buckley*, 424 U.S. at 44) (emphasis in original).

Petitioners note that these post-*Buckley* cases struck down limits on independent expenditures by groups that were not candidates for elective office. Pet. at 16. But surely petitioners are not seriously suggesting that the rights of candidates to directly convey their own political message to voters is somehow inferior to other groups who have a less direct stake in the electoral result. To the contrary, "it is of *particular* importance that candidates have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidate's personal qualities and their positions on vital public issues for choosing among them on election day." *Buckley*, 424 U.S. at 52-53 (emphasis added). *See id.* at 53. (The need for public discussion "applies with special force to candidates for public office.")

If anything, the question of expenditures by outside groups is more difficult because such expenditures may not be truly "independent" and thus could be tantamount to a *de facto* contribution to the candidate, with the potential for improper influence or the appearance of improper influence. *NCPAC*, 470 U.S. at 498. Since the Court has invalidated efforts to limit outside groups' spending notwithstanding this potential for *quid pro quo* corruption,

limiting candidate spending is *a fortiori* unconstitutional since the candidate obviously cannot improperly influence himself. In short, it is quite impossible to "see how a Constitution that grants to individuals, [political parties], and ordinary political committees the right to make unlimited independent expenditures could deny the same right to [candidates]." *Colorado*, 116 S. Ct. at 2317.

Finally, even if direct restrictions on core political speech could be justified without any actual factual record, there is no basis for *assuming* that spending caps would reduce the influence of large donors or "bundlers" since the most plausible assumption is precisely the opposite. A contribution of $10,000 (through "bundling" or a violation of contribution limits) yields far greater influence over a candidate limited to spending $140,000 than it does on a candidate who spends $300,000. The inexorable mathematical conclusion is that a large donor's (or "bundler's") contribution will represent a greater percentage of a candidate's total contributions (and thus increase his relative influence) under a legal structure that limits expenditures than under one which does not.

Thus, the court below was quite correct to hold that the "federal experience" cannot bolster Cincinnati's cap on expenditures because (1) the federal experience *confirms Buckley*'s prediction of compliance with contribution limits without expenditure caps and (2) the alleged "loopholes" in federal contribution laws might justify Cincinnati's elimination of those "loopholes," but cannot rationally "undermine the Supreme Court's conclusion that spending restrictions are not narrowly tailored to addressing the problem of the corrupting nature of money and politics." App. at 21.[13]

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[13] To be sure, the court below quite naturally interpreted petitioners' vague allusions to the "ineffectiveness" of

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contribution limits in recent federal elections as referring to the "soft money" loophole, since this has been the principal loophole cited in press accounts of recent elections, as well as the very law review articles cited by *petitioners*. Fred Wertheimer and Susan Weiss Manes, *Campaign Finance Reform: A Key to Restoring the Health of Our Democracy*, 94 Colum. L. Rev. 1126, 1144-45 (1994); Jamin Raskin and John Bonifaz, *Equal Protection and the Wealth Primary*, 11 Yale L. & Pol'y Rev. 273, 327 (1993). In response, petitioners no longer advance the "soft money" loophole as part of the "federal experience" which purportedly undermines *Buckley*'s views on contribution limits' "effectiveness" and concede that "abuses with the soft-money loophole . . . do not explain the insufficiency of contribution limits in federal candidate campaigns." Pet. at 20 n.27. The City's tactical retreat on this point is well advised since the most publicized "soft money" abuses occurred in the recent *presidential* election campaign, the *only* federal elections with expenditure limitations of the sort petitioners seek to impose. *See Buckley*, 424 U.S. at 85-109 (voluntary spending limits in exchange for public financing in presidential election campaigns constitutional); 26 U.S.C. § 6096, *et seq.* Thus, if the Court is to adjudicate fundamental First Amendment principles on the basis of press clippings concerning the federal experience, these newspaper stories demonstrate, if anything, that expenditure limitations *increase* incentives to violate campaign finance laws.

In addition, petitioners are quite correct that an evaluation of the "federal experience" in adjudicating the Cincinnati Ordinance must be based on a proper "record presented" and not judicial notice of law review articles or press accounts. Pet. at 20 n.27. Since petitioners' only information concerning the "federal experience" is their citation of such articles in appellate briefs, and not any specific evidence or materials relied upon by the City Council at the time of enactment, there is no proper evidentiary support for petitioners' *post hoc* invocation of that experience in support of the challenged Ordinance. But since the City relied exclusively on such articles to demonstrate the

II. PETITIONERS OFFER NO NEW FACTS OR INTERESTS IN SUPPORT OF CINCINNATI'S EXPENDITURE LIMITATION ORDINANCE

Petitioners' other major contention is that Cincinnati's unique facts and government interests distinguish its spending limits ordinance from the virtually identical one enacted by the federal legislature and invalidated by *Buckley*. As an initial matter, of course, petitioners' emphasis on the stark differences between Cincinnati and federal elections, which purportedly distinguish *Buckley*, completely undermines their simultaneous assertion that the federal election experience is directly transferable to the local Cincinnati situation. More fundamentally, all the interests and factual allegations proffered by Cincinnati are indistinguishable from those which were directly considered and rejected in *Buckley*.

First, the City suggests that it has discovered a new and compelling interest served by expenditure limitations: it reduces the amount of time candidates devote to fundraising and thus avoids "a real and detrimental impact on the ability of elected officials to govern." Pet. at 22. But this very interest was advanced by Justice White's dissenting opinion in *Buckley*: "[L]imiting the total that can be spent will ease the candidate's understandable obsession with fundraising, and so free him and his staff to communicate in more places and ways unconnected with the fundraising function." *Buckley*, 424 U.S. at 265 (White, J., dissenting). *See id.* (Expenditure limits insulate candidates from "the influence inevitably exerted by the endless job of raising increasingly large sums of money.") The *Buckley* court properly found that

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alleged inadequacies of federal election law, their criticism of the court below for citing a similar article is quite incomprehensible.

this interest, like all other "suggested" government interests supporting expenditure caps, was not "sufficient to justify the restriction[s] on the quantity of political expression." 424 U.S. at 55.

As the court below correctly recognized, just as the First Amendment prohibits government from paternalistically informing the candidate that he is spending a "wasteful, excessive or unwise" amount of money, so too does it prohibit government from paternalistically informing the candidate that he is spending an "excessive" amount of time raising money. App. at 22 (quoting *Buckley*, 424 U.S. at 57). For, "[i]n the free society ordained by our Constitution it is not the government, but the people – individually as citizens and candidates . . . " – who make such determinations. *Buckley*, 424 U.S. at 57. Even assuming that government has a legitimate interest in regulating the amount of time *public* servants devote to fundraising, the Cincinnati Ordinance is nonetheless necessarily overbroad because it applies to nonincumbents, such as Respondent Kruse, who are not on the public payroll and who, as even the City admits, are most in need of spending large amounts to overcome incumbents' inherent advantages.[14] Even more obviously, the Ordinance is fatally overbroad because it applies to wealthy candidates – incumbents and challengers – who can spend their own money and thus devote no time to raising outside funds.

Moreover, this alleged interest in saving candidates' time is not properly presented in this case. First, the City

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[14] *See* Jt. App. II at 190 (Sterne Aff.); App. at 24 ("[S]pending limits . . . could instead serve only to protect incumbents and 'handicap a candidate who lacks substantial name recognition or exposure of his views before the start of the campaign.' ") (quoting *Buckley*, 424 U.S. at 56-57); *Buckley*, 424 U.S. at 31 n.33 ("[I]t is axiomatic that an incumbent usually begins the race with significant advantages.").

has advanced this time-saving rationale as a compelling interest underlying the Ordinance for the *first time* in this Court. It never advanced this policy as a compelling interest in the briefs to the courts below or in the affidavits by City Council members which purportedly described the interests underlying the Ordinance, but was raised only by *amici* on appeal. *See* App. at 22-23. Since a compelling government interest cannot properly be advanced by the *government's* counsel if it was not relied upon by the governmental body at the time of enactment, it follows *a fortiori* that an interest offered only by *amici* on appeal is facially insufficient to retroactively support any such law. *See United States v. Virginia*, 116 S. Ct. 2264, 2275 (1996) ("The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation."). In addition, there is no evidence in this record that any member of the City Council, or any other public employee, ever neglected his public duties in any way in order to raise money under the old regime where expenditures were unlimited.[15] The City also suggests that the Cincinnati situation is different than that confronted by *Buckley* because, *prior* to contribution limits, a small percentage of donors contributed a disproportionate amount of campaign funds and the cost of City Council campaigns are "skyrocketing." App. at 22. But, of

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[15] While the City's Campaign Finance Board (which recommended *against* expenditure limits) asserted in a conclusory manner that "unreasonable" amounts of time were spent on fundraising, it never suggested that this in any way detracted from anyone's public duties and no such assertion was made by any City Council member either when the Ordinance was contemplated or in the litigation-related affidavits filed by those members. *See* Jt. App. I at 124; Jt. App. I at 190-222, 251-53. Moreover, the League of Women Voters' report simply said that fundraising "*may*" detract from such public duties. Jt. App. I at 182-89 (emphasis added).

course, Congress made extensive findings in *Buckley* concerning both of these phenomena, and relied on them heavily in enacting FECA.[16] The *Buckley* court duly noted all of this, but properly rejected it as legally irrelevant because limiting the amount a candidate can spend does not reduce the influence of large donors – that problem can be dealt with only by eliminating large donors through contribution limits.[17] Indeed, since it is becoming exponentially more expensive for candidates to deliver their message to voters, limiting the amount they can spend exponentially *increases* the burden imposed on engaging in this core political speech.[18]

The City also makes the Delphic and ambiguous pronouncement that "the amount of money in politics" has created a "crisis in public confidence" and loss of "faith" in the electoral process. Pet. at 17 n.24. Needless

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[16] *See, e.g., Buckley*, 424 U.S. at 55 ("The major evil associated with rapidly increasing campaign expenditures is the danger of candidate dependence on large contributions."); *id.* at 57 ("The campaign expenditure ceilings appear to be designed primarily to serve the governmental interests in reducing the allegedly skyrocketing costs of political campaigns."); *Buckley*, 519 F.2d at 837 ("The record documents the interaction of ever-increasing campaign expenditures, and reliance on large contributions for money and special interests. . . . Just 2-3 percent, the wealthiest people in the country, are responsible for about 95 percent of the financing for congressional elections.").

[17] *See, e.g., Buckley*, 424 U.S. at 57 ("In any event, the mere growth in the cost of federal election campaigns in and of itself provides no basis for governmental restrictions on the quantity of campaign spending and the resulting limitation on the scope of federal campaigns.").

[18] *See Buckley*, 424 U.S. at 19 ("The electorates' increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.").

to say, this fails to distinguish *Buckley* because, as the voluminous congressional testimony conclusively established, the United States citizenry understandably had, at a minimum, the same concerns in the wake of Watergate, and FECA "was responsive to Congress' finding of a definite need for effective and comprehensive legislation in this (campaign finance) area to restore and strengthen public confidence in the integrity of the political process." *Buckley*, 519 F.2d at 840 (internal citations omitted); *see also id.* at 913 (Tamm, J., concurring in part and dissenting in part) (Interests advanced by the government as compelling include "the alienation from and disillusionment in the electoral process by this country's citizens."). Moreover, as the court below correctly noted, a broad-based assertion of public disillusionment with "money in politics" adds nothing tangible to the analysis concerning the legitimacy of interests advanced by the City Council in defense of the Ordinance. App. at 21. If a majority of the Cincinnati electorate is disillusioned because they believe it is "corrupt" or "unfair" that a candidate with more money can communicate his electoral message more effectively, they, like a majority of the City Council, nonetheless have no right to censor the wealthy candidates' speech to "level the electoral playing field" for poorer candidates. *Colorado*, 116 S. Ct. at 2312.

> [T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed to secure the widest possible dissemination of information from diverse and antagonistic sources and to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.

Buckley, 424 U.S. at 48-49 (internal quotations and citations omitted). If the Cincinnati electorate is disillusioned

because they believe large donors exert undue influence through hefty campaign contributions, they can constitutionally solve this problem through contribution limitations.

As in *NCPAC*, while the City repeatedly invokes "appearance of corruption" like a mantra, it never informs the Court "precisely what the 'corruption' may consist of. . . . " 470 U.S. at 498; App. at 19 n.15. It is certainly not the narrowly defined corruption (or appearance thereof) that the Court has held the government has a legitimate interest in preventing, *i.e.*, "the financial *quid pro quo*: dollars for political favors." *NCPAC*, 470 U.S. at 497. Rather, the City clearly equates "corruption" with the core political speech protected in *Buckley* – the ability of some candidates to spend more than others and achieve a political advantage by doing so. *See* Jt. App. at 194 (Sterne Aff.) ("A wealthy candidate or one with wealthy supporters can pour tens of thousands into his or her own campaign.").

Finally, even if the right of individual candidates to engage in fundamental political speech is to be decided by public opinion polls, the City can provide no evidence suggesting that the absence of spending limits, as opposed to contribution restrictions, has caused any of the public dissatisfaction they identify. The citizenry's view that "large campaign contributors wield undue influence on the political system" presumably will be fully cured by the ordinance eliminating large campaign contributions. Pet. at 5 (internal quotations omitted). As the concurring opinion below correctly noted, there certainly is no basis for a contrary finding or assertion on this record since all the polling relied on was done *before*

the contribution limits law had been used in any campaign. App. at 30-31 (Cohn, J., concurring).

Petitioners also make much of the startling new "fact," unique to Cincinnati, that better-funded candidates are able to purchase more television time and "drown out" the competing message of candidates with fewer funds. Pet. at 23-34. But it is hardly a surprising revelation, unknown to the *Buckley* court, that television is an effective means of communicating with voters and that those with more money can use more of it. *Buckley*, 424 U.S. at 19-21. To the extent that some candidates do not have the means or savvy to purchase television advertisements in a timely manner, this is not a "*governmentally-imposed* barrier[ ] to participation," but a consequence of the candidate's own limited resources or incompetence. App. at 26. As the court below correctly noted, the First Amendment does not permit the government to "correct" this consequence of unequal resources by eliminating other candidates' ability to effectively deliver *their* message: " '[T]he principles that underlie invalidation of governmentally imposed restrictions on the franchise do not justify governmentally imposed restrictions on political expression.' " App. at 26 (quoting *Buckley*, 424 U.S. at 49 n.55).[19] In any event, the only alleged example of a candidate being "blacked out" from purchasing desirable TV time is that of Mr. Yates, who

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[19] Petitioners claim that the court below did not deal with their assertion that "television advertising purchases . . . drown out the campaigns of less well-funded candidates," but the court plainly did consider, and reject, the City's assertion that "voters are deprived of hearing candidates with lesser resources because wealthy candidates effectively drown them out." Pet. at 28; App. at 23.

was elected in that campaign although he spent only $33,000 total. Jt. App. II at 211-12; *see also* Pet. at 6-7, 24. There is thus no evidence supporting the allegation of a systemic "black-out" or that such a "black-out" has any detrimental effect on candidates.

Thus, contrary to the petitioners' constant refrain, the court below did not fail to examine the facts and interests purportedly underlying the Cincinnati expenditure limit, it simply noted that these facts and interests were identical to those rejected in *Buckley* or legally insufficient or both.

III. *BUCKLEY* SHOULD NOT BE RECONSIDERED AND THIS CASE PRESENTS NO OPPORTUNITY TO DO SO

When reduced to its essence, petitioners' misleading recitation of "new" facts and government interests is simply a backdoor effort to have the Court implicitly overrule *Buckley* and replace it with an undefined and unworkable "fact-intensive" review of each local jurisdiction's campaign spending limits. It is plain, however, that basic principles of *stare decisis* prevent such an eviscera-tion of *Buckley* and that, in any event, this case is a particularly ill-suited vehicle to engage in any fundamental rethinking or revision of that well-established precedent.

On the most basic level, there is simply no basis for undoing the entire edifice of this Court's campaign finance jurisprudence. This Court has long recognized the "necessity" of following its own precedents. *See, e.g., Planned Parenthocd of S.E. Pa. v. Casey*, 505 U.S. 833, 854 (1992) (per curiam); *Vasquez v. Hillery*, 474 U.S. 254, 265-66 (1986). As the Court has explained, *stare decisis* "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and

thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact." *Vasquez*, 474 U.S. at 265-66. On the rare occasions when the Court has departed from this principle, it has done so only when "the decision in question has been proved manifestly erroneous, and its underpinnings eroded, by subsequent decisions of this Court." *United States v. Gaudin*, 515 U.S. 506, 521 (1995). Far from being "manifestly erroneous," the Court's decision in *Buckley* was clearly correct insofar as limitations on campaign expenditures impose severe burdens on core political expression protected by the First Amendment. Nor has *Buckley* been "eroded" by subsequent cases or been "intolerable simply in defying practical workability." *Casey*, 505 U.S. at 854 (citing *Swift & Co. v. Wickham*, 382 U.S. 111, 116 (1965)). To the contrary, the Court has repeatedly applied and extended the rule of *Buckley* in recent years. *See, e.g., Colorado Republican Campaign Comm. v. FEC*, 116 S. Ct. 2309 (1996); *FEC v. National Conservative Political Action Comm.*, 470 U.S. 480 (1985).

Even if the Court were inclined to substantially modify or discard *Buckley*, this case plainly does not present a viable opportunity for doing so. As an initial matter, the Court cannot do so because petitioners have not requested it to do so, at least in any forthright or comprehensible manner. Petitioners do not ask that this Court abandon the requirement that expenditure limits be narrowly tailored to a compelling governmental interest or in any way alter the straightforward principle that, as a matter of law, government has no legitimate interest in "equalizing the financial resources of candidates" by imposing spending caps. *Buckley*, 424 U.S. at 56. Nor do petitioners present any alternative formulation of the constitutional standard to govern expenditure limitations if *Buckley* is to be modified. Rather, they ask only that the Court "rule" that new facts and interests may be considered within *Buckley*'s strict scrutiny framework. But, as

we established at length above, both the majority and concurring opinions below did "consider" the City's allegedly new facts and interests. The court simply refused, quite properly, to treat *Buckley*'s normative, legal judgments as tentative empirical predictions to be relitigated *de novo* by each lower federal court or, alternatively, to second-guess *Buckley*'s "empirical" judgments when the City was unable to produce any credible factual allegations for doing so. Since the court below rejected the City's position on both legal *and* factual grounds, that ruling presents only a fact-intensive question not warranting this Court's plenary review.

More important, since the petition so narrowly frames the question for this Court's review, it inherently provides an inadequate basis to issue any broad legal principle that might guide the other jurisdictions which petitioners claim are considering expenditure limits. Since petitioners cannot plausibly maintain that the lower court failed to faithfully apply *Buckley* and its progeny, and since they are unwilling to ask the Court to overrule or modify those cases, it provides the Court with no opportunity to revisit *Buckley* in any serious way, even if it were so inclined.[20]

In addition, this case presents the weakest possible record for inferring that new facts or circumstances since 1976 have eroded the empirical or conceptual underpinnings of *Buckley*, at either the federal or local level. At the local level, since Cincinnati's contribution limits were never adopted or implemented until after it had enacted

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[20] *Cf. Colorado*, 116 S. Ct. at 2321 ("[T]he 'principles that animate our policy of *stare decisis* caution against overruling a longstanding precedent on a theory not argued by the parties.' ") (quoting *United States v. International Bus. Mach. Corp.*, 116 S. Ct. 1793, 1801 (1996)). *See* Supreme Court Rule 14.1(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court.").

expenditure limits, there is no possible basis for concluding that contribution limits alone were inadequate to address whatever perceived electoral evils were to be cured by expenditure limits. At the federal level, the sum total of the record on the "federal experience" is two newspaper articles on the *1996* elections, law review articles on the "soft money" loophole (which the City now admits is irrelevant) and a single law review article by petitioners' counsel on "bundling" – hardly an adequate basis for any informed judgment about the lessons of federal campaign finance in the wake of *Buckley*. This is particularly true since there is absolutely no evidence on the only empirical issue even arguably left open by *Buckley, i.e.*, whether expenditure limits are necessary to "police" adherence to contribution limits.

Additionally, the City's schizophrenic alteration between asserting that the federal evidence supports expenditure caps in Cincinnati and asserting that Cincinnati is markedly different from the federal situation, renders any coherent factual analysis impossible. Even more important, as the court below correctly noted, petitioners' own evidence and arguments demonstrate that Cincinnati is not a jurisdiction where candidates need significant amounts of cash to succeed in the electoral process or communicate with voters. Four of the nine current City Council members were elected while spending less than $140,000, and one spent as little as $33,000. Pet. at 7.

Moreover, as a matter of law, all of the "new" facts and interests presented by Cincinnati, even if demonstrably true and relevant, cannot justify the expenditure limit Ordinance because all of these interests and facts were developed after-the-fact by counsel in connection with this litigation, but were never considered by the City Council when the law was enacted. It is well-established, however, that a governmental entity may not satisfy strict scrutiny through hypothesized *post hoc* justifications or evidence that was not before the legislature at the time of

enactment. *United States v. Virginia*, 116 S. Ct. at 2275 ("The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation."); *Shaw v. Hunt*, 116 S. Ct. 1894, 1902-03 (1996). Specifically, in this case, (1) all relevant Cincinnati-specific information (such as large donor funding, public opinion polling, affidavits on the television ad "black-out" phenomena) was gathered after 1995 in connection with this litigation; (2) none of the newspaper or law review articles on the "federal experience" nor the *1996* federal elections was before the City Council in 1995 and (3) the City never asserted that its interest in saving candidates' time motivated passage of the legislation prior to its petition in this Court.[21]

Finally, adopting petitioners' procrustean interpretation of *Buckley* can only create an unworkable and hopelessly confused standard for adjudicating the permissibility of spending limits. As best we can discern, the City proposes a rule where the constitutional validity of expenditure caps varies from jurisdiction to jurisdiction depending on specific fact-finding concerning what litigation-related polling says about the citizenry's "faith in democracy," the time candidates spend on fundraising, the extent to which all candidates can purchase valuable television advertisements or some undefined combination of the above. Under this regime, the First Amendment would have an "accordion-like quality" where

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[21] In this regard, the City seems to suggest that the lower court somehow misapplied the summary judgment standard by requiring a full factual showing at this stage of the litigation. Both lower courts, however, expressly accepted all of the City's factual allegations as true, but correctly found that the City had not offered any evidence which supports a legally sufficient interest, much less the "significant probative evidence" that must be offered in response to a summary judgment motion. App. at 8-9; *Anderson v. Liberty Lobby*, 477 U.S. 242, 252 (1986).

candidates in Cleveland have a right to unlimited campaign spending that is denied to candidates in Cincinnati. *Defunis v. Odegaard*, 416 U.S. 312 (1974) (Douglas, J., dissenting). Worse still, the most "corrupt" cities with the most disillusioned citizenry could justify expenditure limits, while those relatively content with city elections and government could not, because the citizens of the latter city retain their "faith in democracy." This creates the utterly perverse result that corrupt cities can limit the expenditures of "reform" candidates, who seek to challenge corrupt incumbents, but need to spend a lot of additional money to overcome those incumbents' name recognition and other advantages.

In sum, petitioners cannot plausibly challenge *Buckley*'s holding on expenditure limits under fundamental principles of *stare decisis* and, presumably as a consequence, have not offered any viable standard with which to replace it.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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City of Cincinnati

An Ordinance No. 336-1995

AMENDING Title I of the Cincinnati Municipal Code, by ordaining supplementary Chapter 117, Campaign Finance, to provide contribution limits and disclosure requirements for Councilmanic candidates under the authority of Article IX Section 1 of the Charter of the city of Cincinnati, which was amended by vote of the electors on May 3, 1994, to permit council to adopt by ordinance campaign finance provisions which may differ from or supplement those provided by state law.

WHEREAS, on May 3, 1994, the electors of the city of Cincinnati approved an amendment to the Charter of the city of Cincinnati which permits the City Council to pass legislation which differs from state law in the area of campaign financing, campaign contributions and campaign expenditures; and

WHEREAS, on June 29, 1994, Council created a Campaign Finance Advisory Board to evaluate and recommend to Council various proposals in the matter of campaign financing, campaign contributions and campaign expenditures; and

WHEREAS, on June 7, 1995 the Campaign Finance Advisory Board delivered its final report to the council in which the Board found that there is a view widely held among voters that the circumstances of large financial contributions give the appearance of the exercise of undue influence in electoral campaigns; that the costs of such campaigns have escalated to such a degree that significant adverse effects including the limitation of

competition in elective races and inordinate amounts of time spent fundraising have resulted and that the availability of more timely public information regarding the financial circumstances of electoral contests is desirable; now therefore,

BE IT ORDAINED by the council of the city of Cincinnati, state of Ohio:

Section 1. That Chapter 117 of Title I of the Cincinnati Municipal Code is hereby ordained to read as follows:

CHAPTER 117. CAMPAIGN FINANCE

§ 117-1. Definitions.

For the purposes of this chapter the words and phrases defined herein shall have the meanings ascribed to them in Title 35. Elections, of the Ohio Revised Code, unless another meaning is ascribed to them in this chapter. Definitions contained in the Ohio Revised Code otherwise applicable to the provisions of this chapter which have been altered by the provisions of Amended Substitute Senate Bill 8, signed by the Governor of the State of Ohio on May 24, 1995 shall be incorporated herein upon the effective date of this ordinance, whether or not the provisions of that bill have taken effect.

§ 117-1-C. Contributions.

"Contribution" shall mean a loan to a candidate by other than a financial institution as defined in Section 5725.01 O.R.C. or one to be repaid by a person other than the candidate, a

gift, deposit, forgiveness of indebtedness, donation, advance, payment, transfer of funds or transfer of anything of value, and the payment by any person other than the person to whom the services are rendered for the personal services of another person, which contribution is made, received, or used for the purpose of influencing the results of an election. "Contribution" shall not include an independent expenditure or uncompensated volunteer services.

§ 117-1-F. Fundraising Period.

"Fundraising period" shall mean that period commencing three hundred days prior to a councilmanic election and ending on December 31 of that year.

§ 117-1-I. Independent Expenditures.

"Independent expenditures" shall mean expenditures which in express terms advocate the election or defeat of an identified candidate but are made without the consent of, in coordination, cooperation or consultation with, or at the request or suggestion of any candidate or candidates, or of the campaign committee or agent of the candidate or candidates. Expenditures by a political party which in express terms advocate the election, or defeat of a candidate shall not be considered independent expenditures.

§ 117-1-P. Political Party.

"Political party" shall mean a political party as defined in Section 3517.01(A) O.R.C., and

shall also include any committee, association or organization recognized as a political party by any federal court and any other committee, association or organization which files a petition signed by qualified electors in a form and manner that the same would be eligible signatures for the presentation of a charter initiative amendment under the constitution of the state of Ohio totaling at least 5% of the number of people voting at the previous election for councilmanic offices in the city of Cincinnati. Such petition shall declare the intent of the circulators of organizing a political party, the name of the party and its intent to participate in the next councilmanic election taking place not less than 120 days after the date of filing of the petition. For the purposes of the contribution limits contained in this chapter, a political party shall include any federal, state or county party affiliated with the political party making a contribution.

§ 117-3. Fundraising Period Restrictions.

The candidate or campaign committee of a candidate for the council may solicit and receive contributions no earlier than three hundred days prior to the date of a councilmanic election and no later than December 31 of that year, There is no restriction on the amount of unexpended contributions raised in one fundraising period which may be carried over into a subsequent fundraising period.

§ 117-5. Contribution Limits.

No individual shall make and no candidate or campaign committee for a candidate for the

council shall solicit or accept a contribution or contributions to the candidate or campaign committee of a candidate for the council in violation of state election law. No individual shall make nor shall any candidate or campaign committee for a candidate for the council solicit or accept from an individual a contribution or contributions to the a [sic] candidate or the campaign committee of a candidate for the council aggregating more than $1,000 during a fundraising period.

No political action committee or campaign committee of another council candidate or campaign committee of another incumbent councilmember shall make and no candidate or campaign committee at any candidate for the council shall solicit or accept a contribution or contributions to the candidate or campaign committee of a candidate for the council in violation of state election law. No political action committee or campaign committee of another council candidate or campaign committee of another incumbent councilmember shall make and no candidate or campaign committee of a candidate for the council shall solicit or accept from a political action committee or campaign committee of another council candidate or campaign committee of another incumbent councilmember a contribution or contributions to a candidate or campaign committee of a candidate for the council aggregating more than $2,500 during a fundraising period.

No political party or legislative campaign fund shall make and no candidate or campaign committee of a candidate for the council shall solicit or accept a contribution to the candidate

or campaign committee of a candidate for the council from a political party or legislative campaign fund in violation of state election law. No political party or legislative campaign fund shall make and no candidate or campaign committee of a candidate for the council shall solicit or accept a contribution or contributions from a political party or legislative campaign fund aggregating more than $10,000 during a fundraising period. An expenditure by a political party shall not be considered a contribution by the political party if the purpose of the contribution is to inform primarily the party's members of its activities or endorsements, or for voter contact such as sample ballots, absentee voter ballot application mailings, voter registration or get-out-the-vote activities.

In-kind contributions consisting of goods and compensated services shall be assigned a fair market value by the candidate or campaign committee of a candidate for the council and shall be subject to the same limitations and reporting requirements as other contributions.

The provisions of this section shall be in force and take effect for the fundraising period applicable to any councilmanic election occurring subsequent to November, 1995.

§ 117-7. Reporting Requirements; Disclosure.

In addition to the reporting requirements contained in Section 3517.10 O.R.C., every candidate or campaign committee, political action committee, legislative campaign fund and political party that either received a contribution or made an expenditure in connection with the nomination or election of any candidate to the

council shall file a full, true and itemized statement, made under penalty of law, setting forth in detail the contributions and expenditures in the same form and manner required under state law, no later than four p.m. of the following dates:

(a) The sixtieth day before a councilmanic election to reflect contributions received and expenditures made from the close of business on the last day reflected in the last previously filed statement, if any in that calendar year, to the close of business on the sixty-eighth day before the election;

(b) During the period beginning on the nineteenth day before a councilmanic election extending through the day of that election, each time a contribution from a contributor that causes the aggregate amount of contributions received from that contributor during that period to equal or exceed $500.00, the campaign committee shall file a five-business-day statement reflecting that contribution. The five-business-day statement shall be filed not later than five business days after receipt of the contribution.

The statements required under the provisions of this section shall be filed in addition to any other statements required under this chapter or the provisions of state law and notwithstanding any provisions of state election law which exempt from reporting requirements contributions under a minimum amount.

Campaign finance reports shall be filed with the clerk of council of the city of Cincinnati and the Hamilton County Board of Elections.

In addition to the requirements of Section 3517.10 O.R.C. concerning the contents of statements to be filed, all such statements filed regarding city council candidates under the provisions of this section or any section of the Ohio Revised Code shall contain the residence address, employer, or if self-employed, the occupation of each individual contributor who contributes more than $100 in any fundraising period.

§ 117-9 Rules; Investigations.

The director of the office of contract compliance and investigations shall adopt rules necessary for the administration and enforcement of the provisions of this chapter.

The director of the office of contract compliance and investigations shall review all reports filed with the clerk of council under the provisions of this chapter for compliance with this chapter and shall investigate any matters which to the director appear to conflict with or violate any of the provisions of this chapter.

Upon presentation to the director of the office of contract compliance and investigations of a sworn affidavit of any person, made on personal knowledge, setting forth any failure to comply with or any violation of the provisions of this chapter the director shall proceed to investigate the charges made in the affidavit.

If the director of the office of contract compliance and investigations finds a violation the director shall impose a civil fine in accordance with the schedule of fines contained in this chapter, the imposition of which shall be subject

to appeal under the provisions of Section 119.12 O.R.C. Any fines collected under the provisions of this chapter shall be deposited in the General Fund of the city of Cincinnati.

If the director of the office of contract compliance and investigations finds, after investigation of an allegation of failure to comply, that a violation has not occurred the director shall prepare a report of those findings which shall be kept on file in the office of contract compliance and investigations for a period of one year.

§ 117-99. Penalties.

Any individual, campaign committee, political action committee, political party or legislative campaign fund that makes a contribution to a candidate or the campaign committee of a candidate and any candidate or the campaign committee of a candidate that solicits or accepts a contribution in violation of the provisions of this chapter shall be fined an amount equal to three times the amount of the excess of the actual contribution over the amount of the contribution permitted by this chapter or three times the full amount of any contribution made, solicited or accepted at any time other than during the fundraising period.

In the event that a candidate's campaign committee returns to its source any contribution or contributions received from that source in excess of the amounts permitted under the provisions of this chapter or any contribution received at any time other than during the fundraising period, within five business days of the receipt of such excess contribution, such excess contribution shall not be considered to have

been solicited or accepted by such candidate or such candidate's campaign committee and the candidate will not be liable to a fine under the provisions of this chapter.

Any candidate or campaign committee, political action committee, legislative campaign fund or political party that fails to file any report required under the provisions of this chapter or fails to provide any information required in any such report shall be fined $100 dollars per day for each day of violation; except that any candidate or campaign committee, political action committee, legislative campaign fund or political party that fails to file a report or provide any information required in a report within the final nineteen days prior to an election shall be fined $200 dollars per day for each day of violation.

Section 2. The provisions of the laws of the state of Ohio pertaining to elections that are not inconsistent with the provisions of this chapter shall remain in full force and effect and shall apply in addition to the requirements of this chapter. In the event of a conflict between the provisions of the laws of the state of Ohio and the provisions of this chapter, the provisions of this chapter shall control.

Passed: October 11, A.D., 1995

/s/ Roxanne Qualls
Mayor

Attest: /s/ _____
Clerk

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

EMERGENCY

City of Cincinnati

An Ordinance No. 9-1997

Doc. # 199602832

AMENDING Title I of the Cincinnati Municipal Code, by repealing and reordaining supplementary Chapter 117, Campaign Finance, to rename Chapter 117, Campaign Finance Contribution Limits and Disclosure, and to provide contribution limits and disclosure requirements for candidates for Council under the authority of Article IX, Section 1 of the Charter of the city of Cincinnati, which was amended by vote of the electors on May 3, 1994, to authorize Council to adopt by ordinance campaign finance provisions which may differ from or supplement those provided by state law.

WHEREAS, on May 3, 1994, the electors of the city of Cincinnati approved an amendment to the Charter of the City of Cincinnati that permits the City Council to pass legislation which differs from state law in the area of campaign financing, campaign contributions and campaign expenditures; and

WHEREAS, on June 29, 1994, Council created a Campaign Finance Advisory Board to evaluate and recommend to Council various proposals in the matter of campaign financing, campaign contributions and campaign expenditures; and

WHEREAS, on June 7, 1995, the Campaign Finance Advisory Board delivered its final report to the Council, in which the Board found that there is a view widely held among voters that the circumstances of large financial

contributions give the appearance of the exercise of undue influence in electoral campaigns; that the costs of such campaigns have escalated to such a degree that significant adverse effects, including voter mistrust, limitations of competition in elective races and inordinate amounts of time spent fundraising have resulted and that the actual or perceived ills of undue influence make contribution limits and more timely public information regarding the financial circumstances of electoral contests desirable; and

WHEREAS, on October 11, 1995, Council enacted Ordinance No. 336-1995, which ordained Chapter 117, Campaign Finance, and imposed various contribution limits, disclosure requirements and fundraising period limitations on Council campaigns; and

WHEREAS, upon further consideration of the various facets of campaign finance reform, the Council is of the opinion that Chapter 117, Campaign Finance, ought to be reordained as Chapter 117, Campaign Finance Contribution Limits and Disclosure and that Chapter 117 ought to contain a different fundraising period and permit the raising of funds for unpaid debt for the 1995 Council elections, as well as to amend various provisions of the Chapter to provide greater candidate accountability more definitive explanations of various limits and disclosure requirements; now, therefore,

BE IT ORDAINED, by Council of the city of Cincinnati, state of Ohio:

Section 1. That Chapter 117 of Title I of the Cincinnati Municipal Code is hereby reordained to read as follows:

CHAPTER 117. CAMPAIGN FINANCE CONTRIBUTION LIMITS AND DISCLOSURE

Sec. 117-1. Definitions.

For the purposes of this chapter, the words and phrases defined herein shall have the meanings ascribed to them in Title 35, Elections, of the Ohio Revised Code, unless another meaning is ascribed to them in this chapter.

Sec. 117-1-C. Contributions.

"Contribution" shall mean a loan to a candidate by other than a financial institution as defined in Section 5725.01 O.R.C. or one to be repaid by a person other than the candidate, a gift, deposit, forgiveness of indebtedness, donation, advance payment, transfer of funds or the transfer of anything of value, and the payment by any person other than the person to whom the services are rendered for the personal services of another person, which contribution is made, received, or used for the purpose of influencing the results of an election or for purposes for which a beneficiary of a campaign fund may be reimbursed pursuant to the provisions of Section 3517.13(O) of the Revised Code. "Contribution" does not include:

(a) Services provided without compensation by individuals volunteering a portion or all of their time on behalf of a person

(b) Ordinary home hospitality

(c) The personal expenses of a volunteer paid for by that volunteer campaign worker

(d) Any gift given to a state or county political party pursuant to 3517.101 [3517.10.1] O.R.C.

(e) Independent expenditures

Sec. 117-1-F. Fundraising Period For 1995 Unpaid Debt.

"Fundraising period for 1995 unpaid debt" shall mean that period commencing on the effective date of this ordinance and extending through June 1, 1997.

Sec. 117-1-G. General Fundraising Period.

"General fundraising period" shall mean, that two year period commencing on December 1 next following a regular municipal election and extending through November 30 next following the next subsequent regular municipal election except that a fundraising period which would have commenced on December 1, 1995 for the fundraising period ending on November 30, 1997, shall commence on the effective date of this ordinance.

Sec. 117-1-P. Personal Funds.

"Personal funds" shall mean moneys contributed to the campaign committee of a candidate by that candidate or by that candidate's spouse, parents, children, sons-in-law, daughters-in-law, brothers, sisters, grandparents, mother-in-law, father-in-law, brothers-in-law, sisters-in-law, or grandparents by marriage.

Sec. 117-1-P1. Political Party.

"Political party" shall mean a political party as defined in Section 3517.01(A) O.R.C., and shall also include any committee, association or organization recognized as a political party for any purpose by any federal court.

Sec. 117-3. Contribution Limits.

No individual shall make a contribution or contributions to the campaign committee of any one candidate for the council aggregating more than $1,000 during a general fundraising period and no campaign committee of a candidate for the council shall, solicit or accept from any one individual, a contribution or contributions aggregating more than $1,000 during a general fundraising period.

No political action committee, campaign committee of another candidate for the council, campaign committee of an incumbent council member or campaign committee for an office other than member of council shall make a contribution or contributions to the campaign committee of any one candidate for the council aggregating more than $2,500 during a general fundraising period and no campaign committee of a candidate for the council shall solicit or accept from any one political action committee, any one campaign committee of another candidate for the council, any one campaign committee of an incumbent council member, or any one campaign committee for an office other than city council, a contribution or contributions aggregating more than $2,500 during a general fundraising period.

No political party or legislative campaign fund shall make a contribution or contributions to the campaign committee of any one candidate for the council aggregating more than $10,000 during a general fundraising period and no campaign committee of a candidate for the council shall solicit or accept from any one political party or any one legislative campaign fund, a contribution, or contributions aggregating more than $10,000 during a general fundraising period.

For the purposes of this section:

(a) All contributions made by and all contributions solicited or accepted from political action committees that are established, financed, maintained, or controlled by the same corporation, organization, labor organization, continuing association, or other person, including any parent, subsidiary, division, or department of that corporation, organization, labor organization, continuing association, or other person, are considered to have been made by or accepted from a single political action committee.

(b) A "political action committee" does not include a political action committee that is organized to support or oppose a ballot issue or question and that made no contributions to or expenditures on behalf of a political party, campaign committee, legislative campaign fund or political action committee.

(c) All contributions made by and all contributions solicited or accepted from a national political party, a state political party and a county political party are considered to have been made by or accepted from a single political party and shall be combined with each other to

determine whether the contribution limits have been exceeded.

There is no restriction on the amount of personal funds which can be contributed to a candidate's own campaign committee.

There is no restriction on the amount of unexpended contributions raised in one general fundraising period which may be carried over into a subsequent general fundraising period.

Solely during the period designated "fundraising period for 1995 unpaid debt," the contribution limits set forth in this section apply separately to the fundraising period for 1995 unpaid debt and to the "general fundraising period" commencing on the effective date of this chapter, in accordance with and subject to all the provisions of Section 117-5 hereof, [example: an individual may make and a campaign committee may solicit and accept a $1,000 contribution for the retirement of 1995 unpaid debt through June 1, 1997 and also a $1,000 contribution during the general fundraising period which coincides, in part, with the fundraising period for 1995 unpaid debt, for purposes other than the retirement of 1995 debt].

Section 117-5. 1995 Unpaid Debt.

If the campaign committee of a candidate for the 1995 regular municipal election for the choice of members of council had unpaid debt as of December 31, 1995, that campaign committee may solicit and accept and individuals, campaign committees for candidates for council,

campaign committees for incumbent members of council, campaign committees for an office other than member of council, political action committees, political parties and legislative campaign funds may make additional contributions, commencing on the effective date of this chapter, through June 1, 1997 [fundraising Period for 1995 Unpaid Debt], to the applicable limitations prescribed under Section 117-3 of this chapter. Any such additional contributions that a campaign committee solicits or accepts or that an individual, campaign committee for a candidate for council, campaign committee for an incumbent member of council, campaign committee for an office other than member of council political action committee, political party or legislative campaign fund makes under this subsection shall not count toward the applicable limitations for any other fundraising period, including the fundraising period including the fundraising period [sic] ending November 30, 1997, if all of the following conditions apply:

(a) The campaign committee reports all debt remaining unpaid on December 31, 1995, showing the date the each debt was incurred and the outstanding balance of unpaid debt from each source. This statement is to be filed with the office of contract compliance and municipal investigations.

(b) Additional contributions for such unpaid debt are solicited and accepted only during the period from the effective date of this chapter through June 1, 1997.

(c) All additional contributions made under this provision relating to unpaid debt are used by the

campaign committee that receives them only to pay the debt of the committee reported under subsection (a) hereof.

(d) The campaign committee maintains a separate account for all additional contributions made under this section and uses moneys in that account only to pay the unpaid debt reported hereunder and to administer the account.

(e) The campaign committee stops accepting additional contributions after funds sufficient to repay the unpaid debt reported hereunder have been raised, and promptly disposes of any contributions received that exceed the amount of the unpaid debt by returning the excess contributions to the contributors or by giving the excess contributions to an organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code.

(f) The campaign committee reports, on or before July 1, 1997, in the same form and manner in which it reported all debt remaining unpaid as of December 31, 1995, a statement showing the disposition of each item of debt reported, the source of contributions used to repay such debt and the disposition of funds raised which were in excess of the amounts needed to pay the previously reported unpaid debt. This report is to be filed with the office of contract compliance and investigations.

Sec. 117-7. Reporting Requirements; Disclosure.

In addition to the reporting requirements contained in Section 3517.10 O.R.C., every campaign committee, political action committee, legislative campaign fund and political party that either received a contribution or made an expenditure in connection with the nomination or election of any candidate to the council shall file a full, true and itemized statement, made under penalty of law, setting forth in detail the contributions and expenditures in the same form and manner required under state law, no later than four p.m. of the following dates:

(a) The sixtieth day before a regular municipal election for the choice of members of the council to reflect contributions received and expenditures made from the close of business on the last day reflected in the last previously filed statement, if any, to the close of business on the sixty-eighth day before the election. In the event that this statement is the first such statement filed by a campaign committee of a candidate, for the council, then the statement shall reflect all contributions received and expenditures made since the date of the first contribution or expenditure made to or received by the campaign committee.

(b) During the period beginning on the nineteenth day before a regular municipal election for the choice of members of the council, extending through the day of that election, each time a campaign committee of a candidate for the council receives a contribution from a contributor that causes the aggregate amount of contributions received from that contributor during that period to equal or exceed $500, the campaign committee shall file a

five-business-day statement reflecting that contribution. The five-business-day statement shall be filed not later than five business days after receipt of the contribution. The statement required by this paragraph shall be filed in addition to any other statements required by this chapter.

Duplicates or copies of the statements required to be filed under the provisions of Chapter 3517 O.R.C. and additional statements required to be filed under the provisions of this chapter shall be filed with the office of contract compliance and investigations of the city of Cincinnati and the Hamilton County Board of Elections. Such reports shall be filed notwithstanding any provisions of state law which exempt from such requirements contributions received or expenditures made under a minimum amount.

In addition to the requirement of Section 3517.10 O.R.C. concerning the content of statements to be filed, all such statements filed regarding candidates for the council under the provisions of this section or any section of the Revised Code shall contain the residence address, employer, or if self-employed, the occupation of each individual contributor who contributes more that $100 in any general fundraising period.

Section 117-9. Rules; Investigations.

The director of the office of contract compliance and investigations shall adopt rules necessary for the administration and enforcement of the provisions of this chapter.

The director of the office of contract compliance and investigations or one designated by the director shall review all reports filed under the provisions of this chapter for compliance with this chapter and shall investigate any matters which to director appear to conflict with or violate any of the provisions of this chapter.

Upon presentation to the director of the office of contract compliance and investigations of a sworn affidavit of any person, made on personal knowledge, alleging any failure to comply with or any violation of the provisions of this chapter, the director shall proceed to investigate the allegations made in the affidavit.

Any statement required to be filed under the provisions of this chapter that is found to be incomplete or inaccurate by the director of the office of contract compliance and investigations shall be accepted on a conditional basis, and the person who filed it shall be notified by certified mail as to the incomplete or inaccurate nature of the statement. Within four business days after receipt of notice, the recipient shall file an addendum to the statement providing the information necessary to complete or correct the statement. In the case of a five-business-day statement, the director of contract compliance and investigations shall notify the person who filed the statement by telephone or facsimile transmission as soon as practicable, followed by notification by ordinary U.S. Mail. Within two business days after receipt of telephone or facsimile notice, the recipient shall file an addendum to the statement providing the information necessary to complete or correct the statement.

If the director of the office of contract compliance and investigations finds a violation, other than the filing of an incomplete or inaccurate statement that is timely completed or corrected by addendum as set forth in this section, the director shall impose a civil fine in accordance with the schedule of fines contained in this chapter, the imposition of which shall be subject to appeal under the provisions of the Ohio Revised Code applicable to appeals from administrative agencies. Fines imposed may be referred to the appropriate agency or office for collection. Any fines collected under the provisions of this chapter shall be deposited in the General Fund of the city of Cincinnati.

Section 117-11. Incorporation of Consistent Provisions of the Ohio Revised Code.

The provisions of the laws of the state of Ohio pertaining to campaign financing, campaign contributions and campaign expenditures that are not inconsistent with the provisions of this chapter shall remain in full force and effect and shall apply in addition to the requirements of this chapter, including, by way of example, Section 3517.08, **Personal Expenses, Expenditures,** thereof. In the event of a conflict between the provisions of laws of the state of Ohio and the provisions of this chapter, the provisions of this chapter shall control.

Sec. 117-99. Penalties.

Any individual who makes a contribution to the campaign committee of a candidate for the council in violation of the provisions of this chapter and knows that the

contribution the individual makes violates the provisions of this chapter and any campaign committee, political action committee, political party or legislative campaign fund that makes a contribution to the campaign committee of a candidate for the council in violation of the provisions of this chapter and any campaign committee of a candidate for the council that solicits or accepts a contribution in violation of the provisions of this chapter shall be fined an amount equal to three times the amount of the excess of the actual contribution over the amount of the contribution permitted by this chapter.

In the event that the campaign committee of a candidate for the council returns to its source any contribution or contributions received from that source in excess of the amounts permitted under the provisions of this chapter or any contribution received at any time other than during the fundraising period applicable to such contribution or contributions, within five business days of the receipt of such excess contribution, such excess contribution shall not be considered to have been solicited or accepted by the campaign committee of such candidate and the campaign committee of the candidate will not be liable to a fine under the provisions of this chapter.

Any campaign committee of a candidate for the council or other entity required to file a statement or statements under the provisions of Section 117-7 hereof, that fails to file any statement required under the provisions of this chapter or fails to provide any information required in any such statement shall be fined $100 per day for each day of violation; except that the campaign committee of any candidate for the council that fails to file a report or provide any information required in any

such report within the final nineteen days prior to an regular municipal election for the choice of members of the council shall be fined $200 per day for each day of violation.

Fines shall not be assessed for any period during which a statement filed has been determined to be incomplete or inaccurate by the director of the office of contract compliance and investigations and such statement has been accepted on a conditional basis. However, at the expiration of the applicable number of days in which to file an addendum to such statement, if no such addendum has been filed or the addendum that has been filed lacks the information requested, fines shall be assessed for each day of violation in accordance with the schedule set forth above.

The fines and penalties set forth in this Section are in addition to and not in lieu of any other fines or penalties which may apply to violations of the provisions of Chapter 3517 O.R.C.

Section 2. That the provisions of existing Chapter 117, Campaign Finance, of Title I of the Cincinnati Municipal Code are hereby repealed.

Section 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety, and it shall go into effect forthwith. The reason for the emergency is the immediate necessity to provide campaign finance provisions tailored to the local government of the city of Cincinnati which are designated to further enhance the confidence of local voters in the integrity of

the electoral system in the city of Cincinnati at the earliest possible time.

Passed January 15 A.D., 1997

/s/ Roxanne Qualls
Mayor

Attest: /s/ _____
Clerk

I HEREBY CERTIFY THAT ORDINANCE NO. 9 1997 WAS PUBLISHED IN THE CITY BULLETIN IN ACCORDANCE WITH THE CHARTER ON 1-28-97.

/s/ _____
Clerk of Council